

THE HONORABLE ROSANNA MALOUF PETERSON

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
AT SPOKANE

BILL COADY, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

ITRON, INC., *et al.*,

Defendants.

No. 2:11-cv-00077-RMP

MEMORANDUM OF LAW IN  
SUPPORT OF CITY OF ROYAL  
OAK RETIREMENT SYSTEM  
MOTION FOR APPOINTMENT  
AS LEAD PLAINTIFF AND FOR  
APPROVAL OF SELECTION OF  
COUNSEL

WITHOUT ORAL ARGUMENT

May 31, 2011

MEM. OF LAW ISO CITY OF ROYAL OAK  
RETIREMENT SYSTEM MOTION FOR  
APPOINTMENT AS LEAD PLAINTIFF & FOR  
APPROVAL OF SELECTION OF COUNSEL - 1  
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## I. PRELIMINARY STATEMENT

This securities class action lawsuit (“the Action”) was brought on behalf of all purchasers of securities of Itron, Inc. (“Itron” or the “Company”) between April 28, 2010, and February 16, 2011, inclusive (the “Class Period”). The Action alleges violations of §§ 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), as amended by the Private Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. § 78u-4, and the Securities and Exchange Commission (“SEC”) Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5.

City of Royal Oak Retirement System (the “Retirement System”) will, and hereby does, move this Court for an order: (1) appointing the Retirement System as Lead Plaintiff in the above-captioned action pursuant to the PSLRA; and (2) approving the Retirement System’s selection of Robbins Geller Rudman & Dowd LLP (“Robbins Geller”) as Lead Counsel and Hagens Berman Sobol Shapiro LLP (“Hagens Berman”) as Liaison Counsel pursuant to the PSLRA.

This Motion is brought on the grounds that the Retirement System is the most adequate lead plaintiff possessing the largest financial interest in the relief sought by the class. In addition, the Retirement System meets the requirements of Rule 23 of the Federal Rules of Civil Procedure (“Rule 23”) because its claims are typical of the class and it will fairly and adequately represent the class. The Retirement System also seeks approval of its choice of counsel.

The Retirement System should be appointed as lead plaintiff because it: (1) timely filed for appointment as lead plaintiff; (2) has the largest financial

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1 interest in this litigation of any proposed lead plaintiff of which it is aware; and  
 2 (3) will fairly and adequately represent the interests of the class. *See* 15 U.S.C.  
 3 § 78u-4(a)(3)(B)(iii). In addition, the Retirement System is precisely the type of  
 4 institutional investor Congress intended would lead securities actions like this one.  
 5 *Armour v. Network Assocs.*, 171 F. Supp. 2d 1044, 1048 (N.D. Cal. 2001) (“The  
 6 underlying assumption of the PSLRA’s lead plaintiff provisions is that the greater  
 7 resources and litigation experience possessed by institutional investors makes them  
 8 better equipped to serve as lead plaintiffs in securities class actions.”). Finally, the  
 9 Retirement System’s selection of Robbins Geller to serve as lead counsel and  
 10 Hagens Berman to serve as Liaison Counsel should be approved. *See* 15 U.S.C.  
 11 § 78u-4(a)(3)(B)(v). Robbins Geller possesses experience in the prosecution of  
 12 securities class actions and will adequately represent the interests of all class  
 13 members as lead counsel.  
 14  
 15

## 16 II. SUMMARY OF PENDING ACTION

17 Itron provides products and services for the energy and water markets  
 18 worldwide. The Complaint alleges that the Company and certain of its executive  
 19 officers issued false and misleading statements and/or failed to disclose that:  
 20 (1) the Company improperly recognized revenue on a contract due to an extended  
 21 warranty obligation; (2) the Company’s revenue and financial results were  
 22 overstated during the Class Period; (3) the Company’s financial results were not  
 23 prepared in accordance with Generally Accepted Accounting Principles  
 24 (“GAAP”); (4) the Company lacked adequate internal and financial controls; and  
 25  
 26

(5), as a result of the above, the Company's financial statements were materially false and misleading at all relevant times.

On February 16, 2011, Itron announced it was restating its financial results for the quarters ended March 31, June 30, and September 30, 2010, to correct improperly recognized revenue on a contract due to an extended warranty obligation. The Company's restatement reduced total revenue for the first nine months of 2010 by \$6.1 million, and both GAAP and non-GAAP diluted earnings per share were reduced by \$0.11 over this same period. On this news, Itron shares declined \$6.33 per share, to close on February 17, 2011, at \$57.29 per share, on unusually heavy trading volume.

### III. ARGUMENT

#### A. The Retirement System Should Be Appointed Lead Plaintiff

The PSLRA establishes the procedure for appointing lead plaintiffs in each private action arising under the Exchange Act that is brought as a plaintiff class action, pursuant to the Federal Rules of Civil Procedure. 15 U.S.C. § 78u-4(a)(3)(B)(i).

First, the plaintiff who files the initial action must publish a notice to the class within 20 days of filing the action informing class members of their right to file a motion for appointment as lead plaintiff. 15 U.S.C. § 78u-4(a)(3)(A)(i). Here, the relevant notice was published on *Business Wire* on February 23, 2011. See Declaration of Karl P. Barth in Support of City of Royal Oak Retirement System's Motion for Appointment as Lead Plaintiff and for Approval of Selection

1 of Counsel (“Barth Decl.”), Ex. A.<sup>1</sup> Within 60 days after publication of the notice,  
 2 any person or group of persons who are members of the proposed class may apply  
 3 to the court to be appointed as lead plaintiff, whether or not they have previously  
 4 filed a complaint in the action. 15 U.S.C. § 78u-4(a)(3)(A)(II).

5  
 6 Second, the PSLRA provides that within 90 days after publication of the  
 7 notice, the court shall consider any motion made by a class member and shall  
 8 appoint as lead plaintiff the member or members of the class that the court  
 9 determines to be most capable of adequately representing the interests of class  
 10 members. 15 U.S.C. § 78u-4(a)(3)(B). In determining the “most adequate  
 11 plaintiff,” the PSLRA provides that:

12  
 13 [T]he court shall adopt a presumption that the most  
 14 adequate plaintiff in any private action arising under this  
 [Act] is the person or group of persons that –

15 (aa) has either filed the complaint or made a  
 16 motion in response to a notice . . .;

17 (bb) in the determination of the court, has the  
 18 largest financial interest in the relief sought by the  
 class; and

19 (cc) otherwise satisfies the requirements of Rule  
 20 23 of the Federal Rules of Civil Procedure.

21 15 U.S.C. §78u-4(a)(3)(B)(iii)(I).

22  
 23 <sup>1</sup> The national news wire services have been recognized as suitable vehicles for  
 24 meeting the statutory requirement that notice be published “in a widely circulated  
 25 national business-oriented publication or wire service.” *Greebel v. FTP Software*,  
 26 939 F. Supp. 57, 58 (D. Mass. 1996) (emphasis is added and citations are omitted  
 here and throughout, unless otherwise noted).

**1. The Retirement System has timely moved for appointment as Lead Plaintiff**

All class members who are interested in moving for the appointment of lead plaintiff in this matter must do so by April 25, 2011. 15 U.S.C.

§ 78u-4(a)(3)(A)(II). Pursuant to the provisions of the PSLRA and within the requisite time frame after publication of the required notice (published on February 23, 2011), the Retirement System hereby moves this Court in a timely manner to be appointed lead plaintiff on behalf of all members of the class.

The Retirement System has also duly signed and filed a certification stating it has reviewed the allegations of the complaint and is willing to serve as a representative party on behalf of the class. *See* Barth Decl., Ex. B.

**2. The Retirement System has the requisite financial interest in the relief sought by the Class**

During the Class Period the Retirement System suffered losses of approximately \$9,600 based on its purchases of Itron securities during the Class Period. *See* Barth Decl., Exs. B, C. Accordingly, upon information and belief, the Retirement System has the largest financial interest in the outcome of this litigation and should be appointed lead plaintiff pursuant to 15 U.S.C. § 78u-4(a)(3)(B).

**3. The Retirement System otherwise satisfies Rule 23**

According to 15 U.S.C. § 78u-4(a)(3)(B)(iii)(cc), in addition to possessing the largest financial interest in the outcome of the litigation, the lead plaintiff must also “otherwise satisf[y] the requirements of Rule 23 of the Federal Rules of Civil Procedure.” Rule 23(a) provides that a party may serve as a class representative

1 only if the following four requirements are satisfied: (1) the class is so numerous  
2 that joinder of all members is impracticable; (2) there are questions of law or fact  
3 common to the class; (3) the claims or defenses of the representative parties are  
4 typical of the claims or defenses of the class; and (4) the representative parties will  
5 fairly and adequately protect the interests of the class. Of these four prerequisites,  
6 only two – typicality and adequacy – directly address the personal characteristics  
7 of the lead plaintiff movant. Consequently, in deciding a lead plaintiff motion, the  
8 court should limit its inquiry to the typicality and adequacy prongs of Rule 23(a),  
9 and defer examination of the remaining requirements until a class certification  
10 motion is filed. *See In re Cree, Inc., Sec. Litig.*, 219 F.R.D. 369, 372 (M.D.N.C.  
11 2003).

12  
13  
14 Under Rule 23(a)(3), the claims or defenses of the representative parties  
15 must be typical of those of the class. Typicality exists where the plaintiffs' claims  
16 arise from the same series of events and are based on the same legal theories as the  
17 claims of all the class members. *See In re Cendant Corp. Litig.*, 264 F.3d 201,  
18 264-65 (3d Cir. 2001). Typicality does not require that there be no factual  
19 differences between the class representatives and the class members, because it is  
20 the generalized nature of the claims asserted which determines whether the class  
21 representatives are typical. *See Priest v. Zayre Corp.*, 118 F.R.D. 552, 555 (D.  
22 Mass. 1988) (“With respect to typicality under Rule 23(a)(3), plaintiffs need not  
23 show substantial identity between their claims and those of absent class members,  
24 but need only show that their claims arise from the same course of conduct that  
25  
26



1 gave rise to the claims of the absent [class] members.”). The Court should  
2 consider whether movant’s circumstances “‘are markedly different or . . . the legal  
3 theory upon which the claims [of that movant] are based differs from that upon  
4 which the claims of other class members will perforce be based.’” *Hassine v.*  
5 *Jeffes*, 846 F.2d 169, 177 (3d Cir. 1988). The requirement that the proposed class  
6 representatives’ claims be typical of the claims of the class does not mean,  
7 however, that the claims must be identical.  
8

9 The Retirement System satisfies the typicality requirement of Rule 23  
10 because, just like all other class members, it: (1) purchased Itron securities during  
11 the Class Period at artificially inflated prices; and (2) suffered damages thereby.  
12 Thus, the Retirement System’s claims are typical of those of other class members  
13 since its claims and the claims of other class members arise out of the same course  
14 of events.  
15

16 Under Rule 23(a)(4) the representative party must also “fairly and  
17 adequately protect the interests of the class.” The PSLRA directs the court to limit  
18 its inquiry of the movant’s adequacy to represent the class to the following: (1) the  
19 absence of potential conflict between the proposed lead plaintiff and the class  
20 members; and (2) the class representatives’ choice of counsel who is qualified,  
21 experienced and able to vigorously conduct the proposed litigation. *See Cree*, 219  
22 F.R.D. at 372.  
23

24 Here, the Retirement System is an adequate representative of the class  
25 because its interests in aggressively pursuing the claims against defendants are  
26



1 clearly aligned with the interests of the members of the class, who similarly  
 2 suffered losses because of defendants' false statements to the market. There is no  
 3 antagonism between the interests of the Retirement System and those of the other  
 4 members of the class. In addition, as demonstrated below, the Retirement  
 5 System's proposed counsel is highly qualified, experienced and able to conduct  
 6 this complex litigation in a professional manner. Thus, the Retirement System  
 7 *prima facie* satisfies the commonality, typicality and adequacy requirements of  
 8 Rule 23 for the purposes of this Motion.

10 **B. The Retirement System's Selection of Counsel Should Be Approved**

11 Pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(v), the lead plaintiff shall, subject to  
 12 court approval, select and retain counsel to represent the class it seeks to represent.  
 13 In that regard, the Retirement System, as the presumptively most adequate  
 14 plaintiff, has selected Robbins Geller as lead counsel and Hagens Berman as  
 15 liaison counsel, subject to this Court's approval. *See* Barth Decl., Exs. D & E.  
 16 Robbins Geller is a 180-lawyer law firm that is actively engaged in complex  
 17 litigation emphasizing securities, consumer and antitrust class actions. Robbins  
 18 Geller possesses extensive experience litigating securities class actions and has  
 19 successfully prosecuted numerous securities fraud class actions on behalf of  
 20 injured investors. The firm's lawyers have been appointed as lead or co-lead  
 21 counsel in landmark class actions, including *In re NASDAQ Market-Makers*  
 22 *Antitrust Litig.*, 187 F.R.D. 465 (S.D.N.Y. 1998), where plaintiffs' recovery was  
 23 the largest ever in an antitrust case, and *In re Enron Corp., Sec. Litig.*, 206 F.R.D.

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1 427 (S.D. Tex. 2002). Robbins Geller's securities department includes numerous  
 2 trial attorneys and many former federal and state prosecutors, and utilizes an  
 3 extensive group of in-house experts to aid in the prosecution of complex securities  
 4 issues. Barth Decl., Ex. D.

5  
 6 Plaintiffs' choice of Liaison Counsel, Hagens Berman, is also very  
 7 experienced in class action litigation, and particularly in securities litigation, where  
 8 we have achieved numerous successes throughout the country and in this Court.  
 9 For example, Hagens Berman recently settled a securities fraud class action against  
 10 Charles Schwab for \$235 million, and has previously been lead or co-lead counsel  
 11 in numerous other securities class actions, including cases against Boeing (a \$92.5  
 12 million settlement, as co-lead counsel, along with Robbins Geller), Morrison  
 13 Knudsen (a \$63 million settlement), and numerous others. Hagens Berman also  
 14 has a long history of successes in securities and other litigation in this District. For  
 15 example, we acted as Liaison Counsel for Robbins Geller in the *Ambassadors'*  
 16 *Group Secs. Litigation*, which very recently settled on very favorable terms for the  
 17 Class. We were also lead counsel in *In re Metropolitan Securities Litig.*, No. 04-  
 18 025-FVS (E.D. Wash.), which settled last year for \$38.5 million.

#### 21 IV. CONCLUSION

22 For the foregoing reasons, the Retirement System satisfies the requirements  
 23 of Rule 23 and all of the PSLRA's prerequisites for appointment as lead plaintiff in  
 24 this action and should be appointed lead plaintiff pursuant to 15 U.S.C. §78u-  
 25 4(a)(3)(B). the Retirement System respectfully requests that this Court: (1) appoint  
 26

1 it as Lead Plaintiff pursuant to §21D(a)(3)(B); and (3) approve its selection of  
2 Robbins Geller as Lead Counsel and Hagens Berman as Liaison Counsel.

3 DATED: April 25, 2011.

4 HAGENS BERMAN SOBOL SHAPIRO

5  
6 By /s/ Karl P. Barth

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 25, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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